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FEMA appeals judge's order to turn over engineering reports for denied Sandy claims

November 24, 2014 by JOE RYAN / joe.ryan@newsday.com



The Federal Emergency Management Agency is appealing a Long Island judge's order calling for the release of thousands of flood insurance documents to determine whether engineers and adjusters conspired to deny superstorm Sandy claims.

The agency, which runs the National Flood Insurance Program, argues that it had no opportunity to make its case before the ruling, which concluded that an engineering report was secretly rewritten to avoid paying a settlement for a house in Long Beach.

"The actions of one engineering firm in one particular case cannot be imputed on all engineers, and certainly not all adjusters, involved in investigating Hurricane Sandy claims," Assistant U.S. Attorney Orelia Merchant wrote in the appeal.

FEMA's appeal, filed late Friday, is the latest in a series of recent legal developments that lawyers say could have significant impact for the more 1,000 lawsuits pending from the 2012 storm.

It was filed in federal court in Central Islip, on the same day similar arguments were submitted by Allstate, Liberty Mutual and more than a dozen other insurers that administered claims for FEMA.

Both of New York's U.S. senators, Democrats Charles Schumer and Kirsten Gillibrand, decried FEMA's decision to appeal the ruling, saying Monday the agency appeared to be trying to conceal wrongdoing.

"There has rarely been a clearer red flag than FEMA's objection to turn over key documents

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EXHIBIT

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from engineers and adjusters that will help determine if flood insurance providers have engaged in fraudulent activities to reduce payments to Long Island homeowners," Schumer said.

A FEMA spokesman did not return calls seeking comment.

The Nov. 7 ruling, by Magistrate Judge Gary Brown, stemmed from a single case in Long Beach. An engineer for U.S. Forensic, who never set foot on the property, rewrote a report to blame damage on erosion rather than on flooding. The move allowed the company processing the claim, Wright National Flood Insurance Co., to deny part of the settlement.

Brown wrote that the practice of rewriting reports appeared to be "widespread." And he ordered all companies being sued over a flood insurance claim to release notes, pictures and other draft materials used to compile reports.

In its appeal, FEMA argued that it lacks authority to force companies to turn over drafts. Moreover, the agency said the move would lead to costly delays in cases that have already dragged on for months.

FEMA asked the U.S. District Court judge who oversees Brown to throw out or curtail the ruling, which applies to all Sandy cases in Nassau, Suffolk, Brooklyn, Queens and Staten Island.

John Mostyn, who is among the lawyers representing homeowners who filed a class-action lawsuit Friday accusing companies of a large-scale conspiracy to deny claims, said he was surprised that the federal government would fight to keep the draft reports from public view.

"It is mind-boggling to me that FEMA would not want to know whether people were defrauded by the insurance companies it hired," Mostyn said. Gillibrand called the appeal "shocking."

"FEMA should be a watchdog for the taxpayers it serves," she said. "And this is an abject failure of that responsibility."

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